

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

MERAS ENGINEERING, INC., a California
Corporation, RICH BERNIER, and JAY
Sughroue,

Plaintiffs,

v.

CH20, INC.,

Defendant.

No. C 11-00389 LB

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND
DIRECTING PLAINTIFF TO FILE A
SECOND AMENDED COMPLAINT
BY JUNE 9, 2011**

[ECF No. 9]

For the reasons stated on the record at the May 26, 2011 hearing on CH20's motion to dismiss, and without objection from CH20, the court grants Plaintiffs' oral motion for leave to amend the first amended complaint to more specifically plead the amount in controversy needed to establish this court's diversity jurisdiction and to possibly add additional claims. The court also dismisses without prejudice the Plaintiffs' first amended complaint. Plaintiff agreed to file the second amended complaint no later than June 9, 2011, and thus the court adopts and directs that schedule.

Any renewed motion to dismiss and opposition may incorporate by reference the existing filings and need not (and should not) reiterate the parties' previously-made arguments. At the same time, the court understands that based on the cases discussed at the hearing on May 26, 2011, including *Google, Inc. v. Microsoft Corp.*, 415 F. Supp. 2d 1018, 1020 (N.D. Cal. 2005) (Whyte, J.), the parties may want to re-cast their arguments. The court outlined its approach in some detail at the May 26 hearing, and the parties need not file supplemental briefing and instead may rely on their

1 prior briefing if the legal context (declaratory relief versus first-to-file rule) remains the same. The
2 court is mindful of driving up costs unnecessarily in a case where the procedural posture – including
3 concerns of judicial resources – may militate in favor of a stay pending the parallel federal case in
4 the Western District of Washington. *See id.*

5 This disposes of ECF No. 9.

6 **IT IS SO ORDERED.**

7 Dated: May 26, 2011



8 LAUREL BEELER
9 United States Magistrate Judge